

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

KIRK T. HARRIS,

Petitioner,

v.

T. CAMPBELL,

Respondent.

Case No. 1:23-cv-01765 JLT SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, GRANTING
RESPONDENT'S MOTION TO DISMISS,
DISMISSING THE PETITION FOR WRIT OF
HABEAS CORPUS, AND DIRECTING THE
CLERK OF COURT TO ENTER JUDGMENT
AND CLOSE THE CASE

(Doc. 24)

ORDER DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

Kirk T. Harris is a state prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, which Respondent moved to dismiss as untimely. (Doc. 18.) The magistrate judge found the petition violates the statute of limitations, because any petition should have been filed no later than September 14, 2014. (Doc. 24 at 3.) The magistrate judge also found Petitioner was not entitled to statutory tolling or equitable tolling. (*Id.* 3-9.) Thus, the magistrate judge recommended Respondent's motion be granted and the petition be dismissed. (*Id.* at 9.)

The Court served the Findings and Recommendations on the parties and notified them that any objections were due within 30 days. (Doc. 24 at 9.) The Court advised Petitioner the "failure to file objections within the specified time may waive the right to appeal the District Court's order." (*Id.*, citing *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).) Petitioner did not file

objections, and the time to do so has passed.

According to 28 U.S.C. § 636(b)(1), this Court performed a *de novo* review of this case. Having carefully reviewed the matter, the Court concludes the Findings and Recommendations are supported by the record and proper analysis. In addition, the Court declines to issue a certificate of appealability.

A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-336 (2003). If the Court denies a petitioner's petition, it may only issue a certificate of appealability when a petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial showing, Petitioner must establish that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)). In the present case, Petitioner did not make the required substantial showing of the denial of a constitutional right, and reasonable jurists would not find the determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to proceed. Thus, the Court **ORDERS**:

1. The Findings and Recommendations issued on September 11, 2024 (Doc. 24) are **ADOPTED** in full.
2. Respondent's motion to dismiss (Doc. 18), is **GRANTED**.
3. The petition for writ of habeas corpus is **DISMISSED** with prejudice.
4. The Clerk of Court is directed to enter judgment and close the case.
5. The Court declines to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: **October 25, 2024**


UNITED STATES DISTRICT JUDGE